IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THIRD MILLENNIUM TECHNOLOGIES, INC.,	)	
Plaintiff,	)	
vs.	)	CASE NO. 03-1145-JTM
BENTLEY SYSTEMS, INC., *et al.*,	)	
Defendants.	)	

MEMORANDUM AND ORDER

The court now considers a Motion to Compel Arbitration and to Dismiss or Stay Proceedings Pending Arbitration (Doc. 4) filed by defendants Bentley Systems, Inc. (Bentley), Warren Winterbottom, and George Church. Plaintiff Third Millennium Technologies (3MT) filed a response (Doc. 8), and the defendants filed a reply. (Doc. 10.) 3MT also submitted a motion for oral argument on the matter. (Doc. 9.) Defendants' motion is GRANTED, and Plaintiff's motion is DENIED, for reasons set forth herein.

BACKGROUND

Plaintiff Third Millennium Technologies (3MT) was a reseller of Bentley software products for several years. (Doc. 5 at 3.) In 1998, Bentley and 3MT entered into an agreement, the MicroStation Value Added Reseller (MVAR) Agreement, that purported to define their business relationship. *See id.* exh. A, MVAR Agreement at 1. The MVAR Agreement included a broad arbitration clause. *See* MVAR Agreement ¶ 11.11. In 1999, the parties entered into a Bentley Integrator Agreement, which specifically referenced the MVAR agreement and amended some provisions thereof. (Doc. 5 exh. A, Integrator Agreement ¶ 5.) Both the MVAR Agreement and the Integrator Agreement granted 3MT the right to sell and service Bentley software products, established a compensation plan, and defined both parties' obligations under the relationship. (Doc. 5 exh. A.) Contemporaneous with execution of the Integrator Agreement, Bentley acquired roughly a 20% interest in 3MT, as well as the right to name a representative to 3MT's board of directors. (Doc. 5 at 4.)

While their relationship may have had pleasant beginnings, it apparently began to sour by early 2002. (Doc. 3 ¶ 16.) Ultimately, the parties could not agree on new terms, and the Integrator Agreement was allowed to expire in January, 2003. (Doc. 5 at 5.) 3MT brought the present action alleging that among other

things, Bentley's conduct during the course of the relationship amounted to a breach of fiduciary duty, breach of trust, and tortious interference with business relationships. (Doc. 3.) Defendants filed the instant motion seeking to enforce the arbitration provision contained in the MVAR agreement. Defendants ask that the present action be stayed or dismissed, and that the court issue an order compelling 3MT to arbitrate according to the terms of the arbitration agreement. (Doc. 4 at 1.)

MAGISTRATE'S AUTHORITY TO STAY PROCEEDINGS AND COMPEL ARBITRATION

A magistrate may rule on non-dispositive matters. *See* 28 U.S.C. § 636(b)(1)(A). The district courts that have considered the nature of an order to stay proceedings pending arbitration and to compel arbitration have concluded that these are non-dispositive orders. ***Torrance v. Aames Funding Corp.***, 242 F. Supp. 2d. 862, 865 (D. Or. 2002); ***Herko v. Metro. Life Ins. Co.***, 978 F. Supp. 141, 142 n.1 (W.D.N.Y. 1997); *see also* ***Touton, S.A. v. M.V. Rizcun Trader***, 30 F. Supp. 2d 508, 509 (E.D. Pa. 1998) (staying proceedings pending arbitration is not injunctive relief under 28 U.S.C. § 636(b)(1)(A)). In ***Herko***, the court discussed the matter in detail and concluded that, because the parties must return to the district court to have the arbitration award confirmed, modified, or vacated

under 9 U.S.C. §§ 9-11, the district court retains jurisdiction even during the arbitration. ***Herko***, 978 F. Supp. at 142 n.1. Accordingly, the order to stay proceedings and compel arbitration was non-dispositive and within the magistrate's authority. *See id.*

Like ***Herko***, the arbitration clause in the MVAR Agreement allows either party to have the arbitration award confirmed in a federal district court under 9 U.S.C. § 9. *See* MVAR Agreement ¶ 11.11 ("the judgment upon the award rendered by the arbitrators shall be enforceable in any court of competent jurisdiction."). *See also* ***P & P Industries, Inc. v. Sutter Corp.***, 179 F.3d 861, 866-68 (10th Cir. 1999). Furthermore, 9 U.S.C. §§ 10 and 11 authorize any party to proceed in federal district court to have the arbitration award vacated or modified. Under all these circumstances, the district court retains authority to review the arbitration award once arbitration has been completed.

The Tenth Circuit used virtually the same rationale as ***Herko*** to conclude that "a stay of a federal suit pending arbitration is not a final order under 28 U.S.C. § 1291." ***Pioneer Props., Inc. v. Martin***, 776 F.2d 888, 891 (10th Cir. 1985). Like ***Herko***, the Tenth Circuit based its holding on the fact that the federal courts retained authority to review the arbitration award under 9 U.S.C. § 10. *Id.* Although ***Pioneer Properties*** did not deal directly with a magistrate's authority to

stay proceedings or compel arbitration, its reasoning was virtually identical to ***Herko***, and clearly confirms that orders to stay proceedings and compel arbitration are non-dispositive because they do not terminate all proceedings in the federal courts.[1] Therefore, a federal magistrate judge does have authority to rule on a motion to stay proceedings and compel arbitration, since this amounts to a non-dispositive pre-trial matter.

STANDARD FOR DECIDING THIS MOTION

In deciding a motion to stay proceedings and a motion to compel arbitration, the court follows a procedure similar to that used in ruling on a motion for summary judgment. ***Phox v. Atriums Mgmt. Co.***, 230 F. Supp. 2d 1279, 1282 (D. Kan. 2002); ***Klocek v. Gateway, Inc.***, 104 F. Supp. 2d 1332, 1336 (D. Kan. 2000). As the parties seeking to compel arbitration, the defendants bear the initial burden

[1]Contrary to some other circuits, the Tenth Circuit *has* ruled that a magistrate lacks authority to remand a case to a state court because this has the effect of terminating all proceedings in federal court and is, thus, dispositive. ***First Union Mortgage Corp. v. Smith***, 229 F.3d 992, 996 (10th Cir. 2000). In so holding, the circuit court concluded that a remand order *was* a final order under 28 U.S.C. § 1291. The court notes that this is contrary to ***Herko***'s conclusion that magistrates do have authority to remand a case to state court. *See* ***Herko***, 978 F. Supp. at 142 n.1. Although ***Herko*** is inconsistent with Tenth Circuit law regarding a magistrate's authority to remand to state courts, ***Herko*** is consistent with ***Pioneer Properties*** regarding the non-dispositive nature of orders to stay proceedings and compel arbitration under the Federal Arbitration Act. Accordingly, ***Herko*** is persuasive in the instant case, particularly in light of its striking consistency with ***Pioneer Properties***.

of showing that they are entitled to arbitration. ***Phox***, 230 F. Supp. at 1282. If the defendants satisfy this requirement, then the burden shifts to 3MT to show a genuine issue for trial, as provided under 9 U.S.C. § 4. *See id.*

Although Section 4 of the FAA calls for a hearing (and perhaps a jury trial) when the parties disagree over whether there is an agreement to arbitrate, or whether one party has failed to comply with the agreement,[2] 9 U.S.C. § 4, the courts that have interpreted this language have adhered to traditional requirements for hearings and juries. Hence, a court need not hold a hearing when the issues involve only questions of law. ***Cincinnati Gas & Elec. Co. v. Benjamin F. Shaw Co.***, 706 F.2d 155, 159 (6th Cir. 1983); ***Int'l Union of Operating Eng'rs, Local Union No. 139 v. Carl A. Morse, Inc.***, 529 F.2d 574, 581 (7th Cir. 1976). Similarly, the party opposing arbitration can't obtain a jury trial without producing some evidence upon which a jury could find for him. *See* ***Dillard v. Merrill***

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[2]Section 4 of the FAA provides, "If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. 9 U.S.C. § 4. Here, neither party disputes the making of the arbitration agreement. (Doc. 5 at 4; Doc. 8 at 1.) Instead, they dispute whether 3MT has failed to comply with the arbitration provision based on differing interpretations of the scope of the agreement to arbitrate. (Doc. 5 at 2; Doc. 8 at 1.). Accordingly, they disagree on the "failure, neglect, or refusal to perform the same." 9 U.S.C. § 4; ***Saturday Evening Post Co. v. Rumbleseat Press, Inc.***, 816 F.2d 1191 (7th Cir. 1987).

Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148, 1154 (5th Cir. 1992). Since Kansas considers the interpretation of unambiguous contract terms to be a question of law, ***Reimer v. Waldinger Corp.***, 265 Kan. 212, 214, 959 P.2d 914, 916 (1998), a hearing will only be required if 3MT raises genuine issues of material fact regarding whether the parties agreed to arbitrate the claims 3MT raises in this suit.

ENFORCEABLE AGREEMENT TO ARBITRATE

In order to be enforceable, any agreement to arbitrate must be in writing. 9 U.S.C. § 2. The court finds that MVAR Agreement ¶ 11.11 constitutes a written agreement between Bentley and 3MT to arbitrate disputes "arising under or related to" the MVAR Agreement. (MVAR Agreement ¶ 11.11.) Although the FAA does not require that agreements to arbitrate be signed, the fact that both parties signed the MVAR Agreement provides further evidence that they assented to, and intended to be bound by, the terms of the agreement, including the arbitration clause.[3] (Doc. 4 exh. A, MVAR Agreement at 14.) Furthermore, paragraph 1 of

[3]The MVAR was actually executed on behalf of a company called CADD Concepts, which later became 3MT by way of a simple name change. (Doc. 5 exh. B, CADD Concepts Corporation Certificate of Amendment to Articles of Incorporation.)

the Integrator Agreement specifically stated, "The MVAR Agreement, as amended and supplemented by this agreement, comprises the 'Bentley Integrator Agreement.'" (Doc. 5 exh. A, Integrator Agreement ¶ 1). Accordingly, the court further finds that the parties incorporated the MVAR Agreement, including the arbitration clause, into the subsequent Integrator Agreement.[4] Thus, the court finds that Bentley and 3MT entered into a written agreement to arbitrate disputes arising under or related to the MVAR Agreement and the Integrator Agreement. Furthermore, the court finds nothing in the arbitration clause that would otherwise render it unenforceable. *See* ***Shankle v. B-G Maint. Mgmt. of Colo., Inc.***, 163 F.3d 1230, 1234 (10th Cir. 1999); ***Cole v. Burns Intern. Sec. Services***, 105 F.3d 1465, 1482 (D.C. Cir. 1997).

[4]Although 3MT stipulates to the conclusion that the Integrator Agreement incorporated the MVAR (Doc. 8 at 3 ("3MT and Bentley entered into a Bentley Integrator Agreement, which amended and supplemented *but otherwise incorporated the MVAR Agreement*") (emphasis added)), 3MT later contradicts itself by arguing that the Integrator Agreement *did not* incorporate the MVAR Agreement. *See id.* at 10 ("the Integrator Agreement *did not* incorporate the MVAR Agreement into the [Integrator Agreement]") (emphasis added). The latter interpretation directly contradicts the plain language of the Integrator Agreement ¶ 1, as quoted above in the main body of the text. To the extent that it makes any difference in determining the issues of arbitrability, the court rejects 3MT's latter contention, and concludes that the Integrator Agreement did incorporate the MVAR Agreement, as amended and supplemented by the remainder of the Integrator Agreement.

SCOPE OF ARBITRATION

In order to complete the inquiry under sections 3 and 4 of the FAA, the court must determine whether the disputes at issue fall within the scope of the arbitration provision. *See* 9 U.S.C. §§ 3-4. Because federal policy favors arbitration, any ambiguities regarding the scope of the agreement to arbitrate should be resolved in favor of arbitration. ***Mastrobuono v. Shearson Lehman Hutton, Inc.*** 514 U.S. 52, 62, 112 S. Ct. 1212, 1218, 131 L. Ed. 2d 76 (1995); ***Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.***, 460 U.S. 1, 24-25, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765 (1983); ***Williams v. Imhoff***, 203 F.3d 758, 764 (10th Cir. 2000). Moreover, disputes concerning "whether an arbitration clause in a concededly binding contract applies to a particular type of controversy is for the court" to decide. ***Howsam v. Dean Witter Reynolds,*** Inc., 537 U.S. 79, 83, 123 S.Ct. 588, 592, 154 L.Ed.2d 491 (2002).

The arbitration clause contained at MVAR ¶ 11.11 has a broad scope, reaching not only those disputes "arising under" the MVAR, but also those disputes, controversies or claims "related to" the agreement. MVAR ¶ 11.11. *See* ***P & P Industries, Inc. v. Sutter Corp.***, 179 F.3d 861, 871 (10th Cir. 1999), citing ***Prima Paint Corp. v. Flood & Conklin Mfg. Co.,*** 388 U.S. 395, 398, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). The court has already determined that the

arbitration provision in the MVAR was incorporated into the Integrator Agreement. Accordingly, any causes of action springing from those agreements would fall within the scope of the arbitration clause.

In determining just how broadly to construe the agreement to arbitrate, the court is mindful that "[w]here two or more instruments are executed by the same parties at or near the same time in the course of the same transaction and concern the same subject matter, they will be read and construed together to determine the intent, rights, and interests of the parties." ***In re Villa West Associates***, 146 F.3d 798, 803 (10th Cir. 1998) (applying Kansas law); *see also* ***City of Arkansas City v. Anderson***, 242 Kan. 875, 883, 752 P.2d 673, 679 (1988). In this case, the Stock Purchase Agreement (Doc. 5 exh. B), whereby Bentley obtained an approximately 20% ownership interest in 3MT, was dated the same day as the Integrator Agreement. Similarly, the Shareholders Agreement (Doc. 5 exh. C), whereby Bentley obtained a seat on the 3MT board of directors, was also dated the same day as the Integrator Agreement. Furthermore, the Stock Purchase Agreement expressly stated that both the Shareholder Agreement and the Integrator Agreement had to be effective before the parties became obligated under the Stock Purchase Agreement. (Stock Purchase Agreement ¶ 5.01(b)-(c).) Finally, the Shareholders Agreement specifically acknowledged the existence of the MVAR

Agreement and the Integrator Agreement, and granted Bentley rights to terminate those agreements under certain circumstances. (Shareholders Agreement ¶ 5(b).) Taking all these facts together, the court finds that the Integrator Agreement, the Shareholders Agreement, and the Stock Purchase Agreement were all sufficiently related to one another such that any cause of action stemming from any of these agreements would satisfy the "related to" language in the arbitration clause, thereby requiring such disputes to be arbitrated. Indeed, both the timing and the language of the Integrator Agreement, the Stockholders Agreement, and the Shareholders Agreement show that these agreements were part of a common, coordinated business arrangement between 3MT and Bentley. They were not independent contracts, wholly disconnected with each other; instead, they were all part of an orchestrated, negotiated deal where the execution and validity of one agreement was premised on the prior execution and validity of other agreements between the parties. *See, e.g.* Stock Purchase Agreement ¶ 5.01(Stock Purchase Agreement subject to condition that parties entered into both the Shareholders Agreement *and* the Integrator Agreement). Mindful of the Supreme Court's admonition that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration," ***Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.***, 473 U.S. 614, 626, 105 S.Ct. 3346, 3353, 87 L. Ed. 2d 444

(1985), the court finds that any claims associated with any of these agreements relate to the Integrator Agreement, and are therefore subject to the MVAR arbitration provision that was fully incorporated into the Integrator Agreement.

Claims Against Bentley

Turning now to the actual claims raised by 3MT against Bentley, the court concludes that all these claims are rooted in the business relationships between 3MT and Bentley that were created by the MVAR Agreement, the Integrator Agreement, the Shareholders Agreement, and the Stock Purchase Agreement. (Doc. 3.) Although the claims are mostly framed as torts and other non-contractual causes of action, that is not sufficient to remove them from the broad scope of the arbitration clause. *See* ***Via Fone, Inc. v. Western Wireless Corp.*** 106 F. Supp. 2d 1147, 1150-51 (D. Kan. 2000). 3MT argues strongly against this conclusion, citing ***Coors Brewing Co. v. Molson Breweries***, 51 F.3d 1511 (10th Cir. 1995) and ***AWF Hedged, Ltd. v. Kidder, Peabody & Co.***, 1994 WL 446782 (10th Cir. 1994). The court finds both of those cases distinguishable.

First, ***Coors*** dealt with application of a broad arbitration agreement to general antitrust claims. *See* ***Coors***, 51 F.3d at 1515. The Tenth Circuit concluded that construing the arbitration agreement to encompass antitrust claims that were

not related to the underlying contract would have the absurd result of permitting "every brewer in America . . . [to] bring an antitrust action against Molson" except Coors. *Id.* at 1516. The court further reasoned that a broad reading of a general arbitration clause might require the parties thereto to arbitrate unrelated tort claims, such as assault. *See id.* Accordingly, the court concluded that the arbitration clause only applied to antitrust claims related to the underlying licensing agreement. *See id.*

Unlike ***Coors***, the claims here arise from the Shareholders Agreement, which gave Bentley a seat on the 3MT board of directors. Although 3MT correctly states that its claims are based on the Kansas common law regarding duties of corporate directors (Doc. 8 at 7), Bentley's seat on the 3MT board was acquired directly through the Shareholders Agreement. This is quite different from ***Coors***, where the antitrust claims arose under general antitrust law, and had nothing to do with the specific business dealings between the parties. Here, 3MT would have no claims against Bentley had 3MT not entered into the Shareholders Agreement, thereby giving Bentley a seat on the 3MT board. Having already concluded that the Shareholders Agreement is related to the Integrator Agreement, 3MT's claims are thus subject to the Integrator Agreement's arbitration provision.

Next, 3MT relies on ***AWF*** for the proposition that "if the tort claim would

exist without proof of the contract containing the arbitration clause, the claim did not arise out of the agreement, and arbitration could not be compelled." (Doc. 8 at 14 (citing ***AWF***, 1994 WL 446782 at *2).) 3MT misinterprets the Tenth Circuit's opinion in ***AWF***. In deciding that case, the circuit court mentioned a case from the Seventh Circuit, where that court concluded that one could not avoid an otherwise valid arbitration clause by suing in tort.[5] *See id.* The Tenth Circuit went on to explain that the determinative factor in the Seventh Circuit's decision was that the tort "required proof of breach of contract as an 'essential element.'" *See id.* (quoting ***Rao v. Rao***, 718 F.2d 219, 225 (7th Cir.1983)). All this discussion, however, was mere dictum. The Tenth Circuit decided ***AWF*** on the grounds that the arbitration clause was so narrowly written, it could not possibly be read to encompass the disputes at issue there. *See* ***AWF***, 1994 WL 446782 at *2. Indeed, there was no underlying contract between the parties in ***AWF***, *see id.* at *1; on the contrary, the agreement to arbitrate was between the defendant and a non-party, and the defendant was trying to impute the arbitration agreement to the plaintiff. *See id.* Accordingly, the unique factual scenario in ***AWF***, combined with the fact that the statements on which 3MT relies are dicta, makes ***AWF*** unpersuasive, if

[5] From the context of the Tenth Circuit's opinion, it appears that the court may have been distinguishing a case that one of the parties relied upon in its arguments.

not completely inapplicable.

Claims Against Winterbottom and Church

Thus far, this discussion has focused on 3MT and Bentley, both of whom were parties to the arbitration agreement. By contrast, neither side cited authorities or discussed in any detail the propriety of compelling arbitration of claims against Winterbottom and Church, neither of whom were actual signatories to any of the relevant agreements. For sake of completeness, the Court will address that issue.

While it is undisputed that parties cannot be forced to arbitrate absent a written agreement to do so, 9 U.S.C. § 2, there are important exceptions to that rule. The Tenth Circuit has acknowledged at least two exceptions where nonsignatories are permitted to enforce arbitration agreements: 1) third-party beneficiaries to the contract containing the arbitration agreement, and 2) agents of a signatory to the arbitration agreement. *See* ***Gibson v. WalMart Stores Inc.***, 181 F.3d 1163, 1170 n.3 (10th Cir. 1999). In support of that proposition, the Tenth Circuit cited ***Arnold v. Arnold Corp. - Printed Communications for Bus.***, 920 F.2d 1269 (6th Cir. 1990), wherein that court said "if appellant can avoid the practical consequences of an agreement to arbitrate by naming nonsignatory

parties as [defendants] in his complaint, or signatory parties in their individual capacities only, the effect of the rule requiring arbitration would, in effect, be nullified." *Id.* at 1281 (internal quotation marks and citations omitted). ***Arnold*** went on to note that other circuits had consistently found that nonsignatories could be bound by an arbitration agreement based on agency principles. *See id.*; *see also* ***Thomson-CSF, S.A. v. Am. Arbitration Ass'n,*** 64 F.3d 773, 777 (2d Cir. 1995); ***Lee v. Chica***, 983 F.2d 883, 886-87 (8th Cir. 1993); ***Letizia v. Prudential Bache Securities, Inc.***, 802 F.2d 1185, 1187-88 (9th Cir. 1986); ***Ketchum v. Almahurst Bloodstock IV***, 685 F.Supp. 786, 793 (D.Kan. 1988). Finally, ***Arnold*** concluded that where all the "alleged wrongful acts relate to the nonsignatory defendants' behavior as officers and directors or in their capacities as agents" of a party to the arbitration agreement, those claims were also governed by the agreement to arbitrate. *Id.* at 1282; *see also* ***Hodge Bros. v. DeLong Co.***, 942 F.Supp. 412, 419 (W.D. Wis. 1996).

A review of 3MT's complaint quickly reveals that every allegation against Winterbottom and Church is based on their actions as agents and officers of Bentley. (Doc. 3 ¶ 3 ("At all times relevant hereto Winterbottom acted as an agent, representative or deputy of Bentley"); *id.* ¶ 4 ("At all times relevant hereto Church acted as an agent, representative or deputy of Bentley"); *id.* ¶ 12 ("The

actions taken by the Bentley Representative on the 3MT board were taken at the direction of Bentley, and they have acted in all respects and at all times as representatives, deputies and agents for and on behalf of Bentley, and Bentley is responsible for their acts and omissions").) Having already found that the claims against Bentley were within the scope of the arbitration agreement, the court finds that those same claims asserted against Winterbottom and Church as Bentley's agents are also subject to arbitration.

As an alternative basis for the same conclusion, the court finds that compelling arbitration of the claims against Winterbottom and Church is reasonable under the test used in ***Ketchum v. Almahurst Bloodstock IV***, 685 F.Supp. 786 (D.Kan. 1988). In ***Ketchum***, the court permitted arbitration of claims against a nonsignatory affiliate of a party to the arbitration agreement when 1) the party consented to arbitration, 2) the claims against the nonsignatory were identical to those against the party to the arbitration agreement, 3) the claims against the nonsignatory arose from the same transaction as those against the party to the arbitration agreement, and 4) the claims against the nonsignatory were within the scope of the arbitration agreement. *See id.* at 793-94. By joining in the motion to compel arbitration (Doc. 4), Winterbottom and Church have clearly consented to arbitration. A review of the amended complaint (Doc. 3) shows that

3MT's claims against Winterbottom and Church easily satisfy the remaining three requirements. Accordingly, 3MT's claims against Winterbottom and Church may be brought under the arbitration agreement with Bentley.

CONCLUSION

In sum, the court finds that the defendants have satisfied their burden under sections 3 and 4 of the FAA, 9 U.S.C. § 3-4, as well as under the summary judgment-like standards set forth in ***Phox v. Atriums Mgmt. Co.***, 230 F. Supp. 2d 1279, 1282 (D. Kan. 2002) and ***Klocek v. Gateway, Inc.***, 104 F. Supp. 2d 1332, 1336 (D. Kan. 2000). That burden then shifted to 3MT to show a genuine issue for trial. ***Phox***, 230 F. Supp. at 1282. An issue is "genuine" if sufficient evidence exists on each side "so that a rational trier of fact could resolve the issue either way." ***Adler v. Wal-Mart Stores, Inc.,*** 144 F.3d 664, 670 (10th Cir. 1998) (citations omitted). Here, neither side disputes the fact that the parties agreed to arbitrate. The only issue involves the scope of arbitration. Since the arbitration provision at issue here requires arbitration of all disputes that "relate to" the Integrator Agreement, the only way that a jury could find that the parties did not agree to arbitrate the claims that 3MT brings here is if the jury concludes that the Shareholders Agreement was completely independent of and unrelated to the

Integrator Agreement. Based on both the timing and the express provisions contained in the Shareholders Agreement, the Stockholders Agreement, and the Integrator Agreement, no rational jury could conclude that the Shareholders Agreement was unrelated to the Integrator Agreement. Accordingly, there is no genuine issue for trial, and the court may decide the matter on the briefs.

Although 3MT has requested oral argument on this motion, that would not be helpful. Both parties have fully briefed the disputed issues raised by the motion to compel arbitration and to stay further proceedings in this case. There is nothing 3MT could argue that would undo the effect of the express provisions in the relevant agreements, which demonstrate that the agreements were all related as part of a common business transaction.

IT IS THEREFORE ORDERED that the defendants' motion (Doc. 4) is GRANTED, and all proceedings in this matter shall be STAYED pending arbitration of the claims presently asserted by 3MT.

IT IS FURTHER ORDERED that the parties shall proceed to arbitration in accordance with the provisions of the arbitration clause.

IT IS FURTHER ORDERED that this court shall retain jurisdiction to review, modify, or vacate any arbitration awards, should any party choose to seek such action as permitted by the Federal Arbitration Act.

IT IS FURTHER ORDERED that the parties shall file a joint status report, not less than once every six (6) months, regarding the progress of the arbitration.

IT IS FURTHER ORDERED that 3MT's Motion for Oral Argument (Doc. 9) is DENIED.

Dated at Wichita, Kansas, on this 21st day of August, 2003.

s/ Donald W. Bostwick
DONALD W. BOSTWICK
United States Magistrate Judge